S.B. CIVIL WRIT PETITION NO.3391/1998.

Mohd. Yar and others vs. State of Raj. and others.

Date : 13.1.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. N.L. Joshi, for the petitioners.

Mrs. Vidhyawati Bora, for the respondents

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Heard learned counsel for the parties.

Brief facts of the case are that the petitioners' father Kamir Khan @ Kamir Bux was resident of Village Hissamki. He was khatedar tenant of the land bearing Khasra No.28, 93 and 106 measuring 46 bighas 11 biswas, 2 bighas 19 biswas and 282 bighas 16 biswas respectively totaling 333 bighas 6 biswas. Kamir Khan died in the year 1949. According to the petitioners, the above land was wrongly entered as evacuee property in the revenue records on the ground that the said Kamir Khan migrated to Pakistan. The petitioners as well as their sister Smt. Lakhavi and their mother Smt. Rehmat preferred revision before the Dy. Custodian General, Government of India, New Delhi who allowed the revision vide order dated 27.11.1971 and held that Kamir Khan never migrated to Pakistan and property of Kamir Khan has wrongly been recorded as evacuee property. However, the Dy. Custodian General remanded the matter to Assistant Custodian, Sri Ganganagar to decide the matter according to law. The

Assistant Custodian declared the above land as non-evacuee land vide order dated 31.10.1972.

According to the petitioners, despite the above orders, the revenue authorities did not correct the entries in the revenue record. However, after several efforts of the petitioners, the State Government passed the order to restore the khatedari rights in favour of the petitioners, Smt. Lakhavi and Smt. Rehmat vide order dated 2.8.1983. In pursuance of the above order dated 2.8.1983, the land measuring 278 bighas of khasra no.106 were recorded in the name of the petitioners, Smt. Lakhavi and Smt. Rehmat in the revenue records but the remaining lands were not recorded in their names on the ground that the land has already been allotted to others. Since some of land was allotted to other persons, therefore, the petitioners were advised to approach the proper authorities for getting the land in exchange. On the petitioners' approach, the Revenue Minister passed the order on 25.1.1996 and allotted 54 bighas of the land in exchange to the petitioners. This land was allotted from Chak No.36 APD Square No.333/424 measuring 25 bighas, Chak No.36 APD Square No.334/425 measuring 15 bighas Killas no.1 to 15 and Chak No.15 MD Square No.42/62 measuring 14 bighas 8 biswas Killas No.11 to 25 totaling to 54 bighas 8 biswas. Copy of order of Revenue Minister is Annex.9. (Annex.1)

The Minister's above order dated 25.1.1996 was not

complied with, therefore, the petitioner preferred writ petition before this Court being S.B. Civil Writ Petition No.1989/1996 (Mohd. Yar and others vs. State of Rajasthan and others). During the pendency of the writ petition, the State Government passed the order dated 23.10.1997 and in view of the above order, the petitioner withdrew the writ petition as the State Government decided to allot the land to the petitioners by the aforesaid order. The said order dated 23.10.1997 was not complied with but ultimately on 25.3.1998, the State Government issued an order directing the District Collector, Sri Ganganagar to allot the land to the petitioner as mentioned in the order dated 25.3.1998.

According to learned counsel for the petitioners, despite all orders in favour of the petitioners, the State authorities have not allotted the land and has not given possession of land to the petitioners.

The respondents submitted a reply to the writ petition and came out with a case that the order dated 25.3.1998 has already been stayed by the State Government vide order dated 28.4.1998. It is also pointed out that vide order dated 25.1.1996 passed by the Revenue Minister, it was already ordered to initiate ceiling proceedings. The respondents further came out with a case that the petitioners cannot be allotted more land than the ceiling area.

In view of the above facts, it is clear that the petitioners' land was wrongly included in the list of evacuee property and it was decided that the entries in the revenue record may be corrected but due to allotment of land to other persons, the petitioners sought land in exchange for which the concerned Minister passed order on 25.1.1996. Since the lands were not recorded in the name of the petitioners or their ancestors at the relevant time, therefore, the ceiling proceedings might not have been initiated against the petitioners for holding agriculture land in excess of the ceiling area, therefore, the remaining land has not been given in possession to the petitioners.

In view of the above, the entitlement for the land to the petitioners is since not in dispute and the State's defence is that the land in excess of ceiling limit cannot be allotted to the petitioners, therefore, the State Government may take a decision within a period of three months from today and decide the case of the petitioners for allotment of land to the petitioners. However, it is made clear that the law applicable for allotment of land may be followed and in case, the authorities are required to assess the land, then first to find out whether the land, if, is allotted to the petitioners, will exceed the limit provided under the ceiling law and then they may pass

appropriate orders.

With the aforesaid directions, this writ petition is partly allowed.

(PRAKASH TATIA), J.

S.Phophaliya